

§ 785.3

15 CFR Ch. VII (1–13 Edition)

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse to do any of the following:

(i) Establish or maintain any record required by the Act or the APR;

(ii) Submit any report, notice, or other information to the United States Government in accordance with the Act or the APR; or

(iii) Permit access to or copying of any record by the United States Government that is related to a person's obligations under the Act or the APR.

(b) *Civil penalties*—(1) *Civil penalty for refusal to permit entry or access.* Any person that is determined to have willfully failed or refused to permit entry or access, or to have willfully disrupted, delayed or otherwise impeded an authorized complementary access, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, submit any report or other information required by the Act or the APR, or permit access to or copying of any record related to a person's obligations under the Act or the APR, as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation.

(c) *Criminal penalty.* Any person that is determined to have violated the Act by willfully failing or refusing to permit entry or access authorized by the Act; by willfully disrupting, delaying or otherwise impeding complementary access authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, submit any required report or other information, or permit access to or copying of any record related to a person's obligations under the Act or the APR, as set forth in paragraph (a) of this section, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than five years, or both.

§ 785.3 Initiation of administrative proceedings.

(a) *Issuance of a Notice of Violation and Assessment (NOVA).* Prior to the initiation of an administrative proceeding through issuance of a NOVA, the Bureau of Industry and Security will issue a letter of intent to charge. The letter of intent to charge will advise a respondent that BIS has conducted an investigation. The letter will give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the letter of intent to charge. If the respondent does not contact BIS in the time period specified in the letter of intent to charge, the Director of the Office of Export Enforcement, or such other Department of Commerce representative designated by the Assistant Secretary for Export Enforcement, may initiate an administrative enforcement proceeding under this § 785.3 by issuing a NOVA.

(b) *Content of a NOVA.* The NOVA shall constitute a formal complaint and will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the maximum amount of the civil penalty that could be assessed. The NOVA also will inform the respondent of the requirement to request a hearing pursuant to § 785.4 of the APR.

(c) *Service of a NOVA.* Service of the NOVA shall be made by certified mail or courier delivery with signed acknowledgment of receipt. The date of signed acknowledgment of receipt shall be the effective date of service of the NOVA. One copy of each paper shall be provided to each party in the delivery. BIS files the NOVA with the Administrative Law Judge (ALJ) at the same time that it is sent to the respondent. The ALJ, in turn, will place the case on its docket and will notify both the respondent and BIS of the docket information.

§ 785.4 Request for hearing and answer.

(a) *Deadline for answering the NOVA.* If the respondent wishes to contest the NOVA issued by BIS, the respondent must submit a written request for a

hearing to BIS within 15 business days from the date of service of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 calendar days from the date of the request for hearing. The request for a hearing and the respondent's answer to the NOVA must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 785.6 of the APR.

(b) *Content of respondent's answer.* The respondent's answer must be responsive to the NOVA and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and this will serve as a denial. Failure to deny or controvert a particular allegation will be deemed to be an admission of that allegation. The answer must also set forth any additional or new matter that the respondent contends will support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed to be waived, and evidence supporting that defense or partial defense may be refused, except for good cause shown.

(c) *English required.* The request for hearing, the answer to the NOVA, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times prescribed in paragraph (a) of this section constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA. If no hearing is requested and no answer is provided, a final order will be signed by the Secretary of Commerce, or by a designated United States Government official, and will constitute final agency action in the case.

§ 785.5 Representation.

An individual respondent may appear, in person, or be represented by a duly authorized officer or employee. A partner may appear on behalf of a partnership, or a duly authorized officer or

employee of a corporation may appear on behalf of the corporation. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

§ 785.6 Filing and service of papers other than the Notice of Violation and Assessment (NOVA).

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to "Additional Protocol Administrative Enforcement Proceedings," at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States certified mail, by express or equivalent parcel delivery service, via facsimile, or by hand delivery is acceptable. Filing from a foreign country shall be by airmail, via facsimile, or by express or equivalent parcel delivery service. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States certified mail, by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. Service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H-3839, Washington, DC 20230, or sent via facsimile to (202) 482-0085. Service on a respondent shall be to the address to which the NOVA was sent, or to such other address as the respondent